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No. 244

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

NICHOLAS MAMULA, *Petitioner*

v.

UNITED STEELWORKERS OF AMERICA, *et al.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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STATUTE INVOLVED

The petition does not include the relevant portions of Title IV of the Labor Management Reporting and Disclosure Act, 73 Stat. 532-34, 29 U.S.C. §§ 481-483. Accordingly, Title IV is printed in its entirety in an Appendix hereto.[1]

STATEMENT

Petitioner, who was the President of Local 1211 of the United Steelworkers of America, was an announced aspirant for nomination as a candidate for the office of Director of District 20 of the Steelworkers in the Union's 1961 elections.[2] The Constitution of the Steelworkers[3] allows

[1] In this brief, we will cite the provisions of the Act by referring to the title and section numbers as they appear in the original enactment and in our Appendix, not as they appear in United States Code.

[2] The union is divided for administrative purposes into 30 geographically defined "Districts," and the affairs of the Union in each District are managed under the direction of a District Director, who is elected by a secret-ballot referendum vote of the members of all locals within the District.

Elections of District Directors are held every four years, and the

each local union in a district to select one person as its nominee for District Director, and provides that the name of each member selected as the nominee of 5 or more locals shall be placed on the ballot as a candidate for the office (Ex. 3, pp. 22-23). Petitioner's name was proposed for consideration at a number of locals, but at only one of the 35 locals in his district did the members select him as their nominee. Accordingly, his name was not placed on the ballot (J.A. 308a).[4]

Petitioner thereupon brought suit in the United States District Court for the Western District of Pennsylvania, for an injunction compelling the union to place his name on the ballot (J.A. 4a). The complaint alleged that the conduct of the nomination meetings did not conform to the requirements of the Labor-Management Reporting and Disclosure Act of 1959, commonly known as the Landrum-Griffin Act."[5]

The Court held a hearing on petitioner's motion for pre-

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procedures governing their nomination and election are spelled out in Article V of the Union's Constitution (Ex. 3). Each local in a district conducts a nomination meeting, upon at least one week's notice to its members, at which it selects its nominee for District Director. Its choice is communicated to the International Secretary-Treasurer. Art. V, Sec. 4. Members nominated by 5 or more locals are placed on the ballot. Art. V, Sec. 5. The election is then conducted in accordance with the detailed procedures of Art. V, Secs. 8-26.

[3] Exhibit 3 (hereinafter "Ex. 3") contained in pocket part to Volume II of the Joint Appendix.

[4] "J.A." refers to the Joint Appendix in the Court below.

[5] While petitioner's theory as to how the Act has been violated has not been uniform throughout this litigation, he has pressed three claims at various stages which are reiterated in the petition (p. 4). First, that since petitioner's name was proposed for nomination at more than 5 meetings, he was thereby "nominated" and entitled to be on the ballot (J.A. 4a-7a); Second, that the union's Constitution is somehow defective, in that it allows each local to determine the procedures governing its nomination meeting (J.A. 279a); Third, that the practice of some locals in selecting their nominee by oral vote (rather than by secret ballot) is somehow improper (J.A. 7a).

liminary injunction, at which time counsel for the union, though opposing the injunction on the ground that petitioner alleged no violation of his rights, pointed out to the court that if the election were held the exclusive procedure for challenging it would be the filing of a complaint with the Secretary of Labor (J.A. 80a). The Court nevertheless denied the preliminary injunction (J.A. 84a), although strongly indicating its view that nomination meetings at several locals had been improperly conducted (J.A. 76a-78a).

The election was duly held on February 14, 1961, without petitioner's name on the ballot.

On February 24, counsel for petitioner sent a copy of the complaint in his lawsuit to the Secretary of Labor, and in an accompanying letter noted that "it may yet be determined that the post-election remedy before you is the exclusive remedy available to a complainant" (J.A. 318a). Commissioner Holcombe, on behalf of the Secretary, replied that the remedy before the Secretary was indeed petitioner's sole method of challenging the already-conducted election. He added, however, that "the Secretary cannot proceed with any investigation of the election under Section 402 until such time as your clients see fit to file complaints with him which meet the conditions set forth in Section 402(a) of the Act" (J.A. 319a-320a). Despite this letter, petitioner never filed a complaint with the Secretary. He sought instead to have the election set aside in his pending lawsuit.

The Union moved for judgment on the pleadings on the ground that the exclusive remedy for challenging an election, once conducted, is that provided in Section 402 of the Act, requiring the filing of a complaint with the Secretary of Labor (J.A. 95a-96a). The Court, without ruling on this motion, proceeded to trial and on October 11, 1961, issued an order vacating and setting aside the election, and declaring it "null and void" (J.A. 286a).

On appeal, the Court of Appeals for the Third Circuit unanimously reversed. Finding that the Act, in § 403, explicitly declares that filing a complaint with the Secretary of Labor is the exclusive procedure for challenging an election, once conducted, the Court ruled that petitioner could not seek to challenge or set aside the election in a private lawsuit (Petition, pp. 17-28).

ARGUMENT

The decision below is clearly correct, and presents no substantial question requiring review by this Court. The Court of Appeals merely gave effect to the language of the statute which, after setting forth in Title IV a carefully drawn procedure for challenging and setting aside an election alleged to have been conducted in violation of the Act, goes on to provide that that procedure is exclusive.

> "No labor organization shall be required by law to conduct elections of officers with greater frequency or in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by this title. Existing rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections *prior to the conduct thereof* shall not be affected by the provisions of this title. *The remedy provided by this title for challenging an election already conducted shall be exclusive*" (Section 403; emphasis supplied).

Petitioner nowhere indicates why the remedy prescribed by Congress does not suit him. Though the petition frequently asserts that the opinion of the Court of Appeals "negates a basic purpose" of the Act, the opinion clearly does no such thing. It simply holds that petitioner, having failed (indeed willfully refused) to follow the procedure outlined in the statute, may not pursue a procedure of his own invention.

It happens that the court below is the first Court of Ap-

peals to rule on this issue. But, as it noted in its opinion (Petition, p. 26), the district court decisions are unanimously in accord. *Colpo* v. *Highway Truck Drivers and Helpers, Local 107*, 201 F. Supp. 307 (D. Del. 1961); *Gammon* v. *International Ass'n of Machinists*, 199 F. Supp. 433 (N.D. Ga. 1961); *Acevedo* v. *Bookbinders and Machine Operators Local 25*, 196 F. Supp. 308 (S.D.N.Y. 1961); *Johnson* v. *San Diego Waiters & Bartenders Union Local 500*, 190 F. Supp. 444 (S.D. Calif. 1961); *Myers* v. *International Union of Operating Engineers*, 40 CCH Labor Cases ¶ 66,436 (E.D. Mich. 1960); *Byrd* v. *Archer*, 38 CCH Labor Cases ¶ 66,083 (S.D. Calif. 1959). The Department of Labor also has determined that the Act precludes individual suits to set aside elections, as is manifested in Commissioner Holcombe's letter to petitioner's counsel (J.A. 319a-320a).

The Court below examined the legislative history, and found that it is in accord with the clear language of the statute:

> "The bill introduced by Senator Kennedy, and known as the Kennedy-Ervin bill, contained the present remedy. The committee report accompanying the bill categorically stated that post election actions to enforce the nomination and election provisions could only be initiated in the courts by the Secretary of Labor. At the same time that the Kennedy-Ervin bill was under consideration, an administration bill was introduced. That bill expressly provided for enforcement by both the Secretary and individual union members. The Kennedy-Ervin bill, and not the administration bill, was passed by the Senate. When the LMRDA reached the House, Title IV was changed to include a provision [for individual suits] . . .
>
> "That provision was removed, however, by the conference committee, prompting Senator Kennedy to say, while reporting back to the Senate:
>
> "'The provisions requiring fair and periodic elec-

> tions are taken from the Senate bill. The Landrum-Griffin bill would have substituted a variety of suits by individual members for enforcement by the Secretary of Labor. The House conferees receded from this position and the Senate provision was restored.'" (Petition, pp. 24-26).

In establishing the special Title IV procedure for setting aside union elections, Congress has assured judicial scrutiny of election conduct while at the same time preventing undue disruption of the affairs of the Union. For, inevitably, judicial review of the validity of a union election does have great potentiality for disruption of the union's affairs. The mere filing of a complaint challenging an election tends to cast a cloud over the actions of the elected officers, and a final adjudication that an election is invalid could create chaos within the union unless some provision is made to tide the union over until a new election is held.

The principal safeguard in the Title IV procedure (§ 402) is the provision that a union member seeking to have his union's election set aside must, after exhausting internal remedies for 3 months, file a complaint with the Secretary of Labor. The Secretary is directed to investigate the complaint and "if he finds probable cause to believe that a violation of this title has occurred and has not been remedied" to file a civil action. Only the Secretary can sue to set aside an election, not any member who wishes to disrupt the affairs of the union. It is thus assured that only substantial attacks on the union's election process will find their way into court.

If the Secretary sues, the challenged election is "presumed valid pending a final decision thereon" and "in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and by-laws may provide." Thus, Title IV assures that the Union's officers will be authorized to act during the pendency of the litigation, and, if the election is set aside, until new officers are elected.

If the Court, in a suit by the Secretary under Title IV, determines that a violation of the title "may have affected the outcome" of the election, it is authorized to declare the election void. The election process thus is disrupted only when a violation may have been decisive in determining the outcome.

Finally the Court, if it declares an election void, "shall . . . direct the conduct of a new election under supervision of the Secretary." The union is thus provided the Secretary's expert supervision, during the period between the declaration of invalidity of the old election and the holding of the new, in the formulation of changes in its election procedures to conform to the Act.

Petitioner would ignore the entire statutory scheme, and allow individual suits. The result, as demonstrated by the District Court's order in this case, may be a declaration that the election is "null and void", with no provision for the conduct of a new election, no supervision, and no indication as to how the alleged deficiencies in the original election may be corrected. Indeed, here, since the District Court found the Union's Constitution somehow "lacking and deficient" (J.A. 280a), apparently no new election could possibly be held until the Constitution were amended.

The District Court purported to set the election aside not under Title IV of the Act but under Title I, the "Bill of Rights" of union members. The Court of Appeals, finding as we have shown that the Title IV procedures are exclusive, ruled that elections cannot be set aside in individual suits under Title I. Moreover, as the Court of Appeals further noted, petitioner failed to show that he was denied his "equal right" to "nominate candidates" guaranteed in Title I:

> "There is nothing in the record showing any of plaintiff's rights as a union member set forth in Title I were violated by defendants. The facts point the other way, for he participated in the meeting [of his local union], was its presiding officer, and had ample opportunity to nominate candidates." (Petition, p. 27).

At most, petitioner's claim is that other members were denied their "equal rights" to participate in the nomination procedures. And the Court of Appeals was clearly correct in holding that Title I, which provides for an action only by persons "whose rights secured by the provisions of this title have been infringed by any violation of this title," does not confer on petitioner standing to enforce the rights of others. Cf. *Johnson* v. *Stevenson*, 170 F. 2d 108 (5th Cir. 1948), *cert. den.*, 336 U.S. 904 (1949).

Contrary to the contentions of the petitioner, the holding of the Court below does not deprive him of a remedy, or make unenforceable the democratic safeguards which the Act was designed to assure. The decision below simply follows the clear language and intent of the statute, which require that any person seeking to challenge or set aside a union election do so in accordance with the exclusive procedures set forth in Title IV.

CONCLUSION

For the reasons stated, the petition for certiorari should be denied.

Respectfully submitted,

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APPENDIX

The following is the complete text of Title IV of the Labor Management Reporting and Disclosure Act of 1959, 73 Stat. 532-34, 29 U.S.C. §§ 481-483.

TITLE IV—ELECTIONS

Terms of Office; Election Procedures

SEC. 401. (a) Every national or international labor organization, except a federation of national or international labor organizations, shall elect its officers not less often than once every five years either by secret ballot among the members in good standing or at a convention of delegates chosen by secret ballot.

(b) Every local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing.

(c) Every national or international labor organization, except a federation of national or international labor organizations, and every local labor organization, and its officers, shall be under a duty, enforceable at the suit of any bona fide candidate for office in such labor organization in the district court of the United States in which such labor organization maintains its principal office, to comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's expense campaign literature in aid of such person's candidacy to all members in good standing of such labor organization and to refrain from discrimination in favor of or against any candidate with respect to the use of lists of members, and whenever such labor organizations or its officers authorize the distribution by mail or otherwise to members of campaign literature on behalf of any candidate or of the labor organization itself with reference to such election, similar distribution at the request of any other bonafide candidate shall be made by such labor organization and its officers, with equal treatment as to the

expense of such distribution. Every bona fide candidate shall have the right, once within 30 days prior to an election of a labor organization in which he is a candidate, to inspect a list containing the names and last known addresses of all members of the labor organization who are subject to a collective bargaining agreement requiring membership therein as a condition of employment, which list shall be maintained and kept at the principal office of such labor organization by a designated official thereof. Adequate safeguards to insure a fair election shall be provided, including the right of any candidate to have an observer at the polls and at the counting of the ballots.

(d) Officers of intermediate bodies, such as general committees, system boards, joint boards, or joint councils, shall be elected not less often than once every four years by secret ballot among the members in good standing or by labor organization officers representative of such members who have been elected by secret ballot.

(e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. Not less than fifteen days prior to the election notice thereof shall be mailed to each member at his last known home address. Each member in good standing shall be entitled to one vote. No member whose dues have been withheld by his employer for payment to such organization pursuant to his voluntary authorization provided for in a collective bargaining agreement shall be declared ineligible to vote or be a candidate for office in such organization by reason of alleged delay or de-

fault in the payment of dues. The votes cast by members of each local labor organization shall be counted, and the results published, separately. The election officials designated in the constitution and bylaws or the secretary, if no other official is designated, shall preserve for one year the ballots and all other records pertaining to the election. The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this title.

(f) When officers are chosen by a convention of delegates elected by secret ballot, the convention shall be conducted in accordance with the constitution and bylaws of the labor organization insofar as they are not inconsistent with the provisions of this title. The officials designated in the constitution and bylaws or the secretary, if no other is designated, shall preserve for one year the credentials of the delegates and all minutes and other records of the convention pertaining to the election of officers.

(g) No moneys received by any labor organization by way of dues, assessment, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election subject to the provisions of this title. Such moneys of a labor organization may be utilized for notices, factual statements of issues not involving candidates, and other expenses necessary for the holding of an election.

(h) If the Secretary, upon application of any member of a local labor organization, finds after hearing in accordance with the Administrative Procedure Act that the constitution and bylaws of such labor organization do not provide an adequate procedure for the removal of an elected officer guilty of serious misconduct, such officer may be removed, for cause shown and after notice and hearing, by the members in good standing voting in a secret ballot conducted by the officers of such labor organization in accordance with its constitution and bylaws insofar as they are not inconsistent with the provisions of this title.

(i) The Secretary shall promulgate rules and regulations prescribing minimum standards and procedures for determining the adequacy of the removal procedures to which reference is made in subsection (h).

Enforcement

SEC. 402. (a) A member of a labor organization—

(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or

(2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation,

may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 401 (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this title has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this title and such rules and regulations as the Secretary may prescribe. The court shall have power to take

such action as it deems proper to preserve the assets of the labor organization.

(c) If, upon a preponderance of the evidence after a trial upon the merits, the court finds—

(1) that an election has not been held within the time prescribed by section 401, or

(2) that the violation of section 401 may have affected the outcome of an election,

the court shall declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization. The Secretary shall promptly certify to the court the names of the persons elected, and the court shall thereupon enter a decree declaring such persons to be the officers of the labor organization. If the proceeding is for the removal of officers pursuant to subsection (h) of section 401, the Secretary shall certify the results of the vote and the court shall enter a decree declaring whether such persons have been removed as officers of the labor organization.

(d) An order directing an election, dismissing a complaint, or designating elected officers of a labor organization shall be appealable in the same manner as the final judgment in a civil action, but an order directing an election shall not be stayed pending appeal.

Application of Other Laws

SEC. 403. No labor organization shall be required by law to conduct elections of officers with greater frequency or in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by this title. Existing rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections prior to the conduct thereof shall not be affected by the provisions of this title. The remedy provided by this title for challenging an election already conducted shall be exclusive.